

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2011-133622-001 SE

08/12/2016

HON. ROSA MROZ

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JESUS ANTONIO BUSO-ESTOPELLAN (001) TONYA J PETERSON
STACY LYNN HYDER

CAPITAL CASE MANAGER

ORDER ENTERED

The Court has considered the Defendant's Motion to Compel Interviews of Investigative Personnel, the State's Response, and the Defendant's Reply. The Court does not need oral argument to decide this issue.

The Defendant requests that the Court compel the State to provide interviews with Deputy U.S. Marshals Matthew Hershey and Joshua Butout. The State objects because it lacked the ability to comply with this Court's order compelling federal government employees to submit to interviews due to sovereign immunity.

The Court notes that the U.S. Marshal's Service (USMS) has already filed a motion to vacate this Court's previous orders directing Deputy U.S. Marshal Mark Dominguez to submit to an interview and for USMS to produce certain documents based on sovereign immunity. It appears that USMS does have sovereign immunity. However, the Court was hopeful that USMS would do the right thing and allow its employees to submit to interviews and produce the needed documents because USMS personnel participated in the investigation of this capital case. It is apparent that the USMS is not willing to waive its sovereign immunity, and this Court does not have jurisdiction to compel them to do so. Neither can the Court compel the prosecution to follow any orders that it has no ability to comply.

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IT IS ORDERED denying the Defendant's Motion to Compel Interviews of Investigative Personnel.

The Defendant is directed to follow the procedure set forth on pages 7 - 9 of the USMS's Motion to Vacate State Court Order that is attached as Exhibit A to the Defendant's Reply if the defense still wants to interview the deputy U.S. Marshals involved and obtain the USMS documents the defense needs.